HIGH COURT OF UTTARANCHAL AT NAINITAL
Writ Petition no. 2804 (S/S) 2001
(Old no. 33089 of 1998)

Sitab Singh S/o Sri Harakh Singh,
Kanhaiyalal D.A.V. Degree College,
Roorkee, district Haridwar. -----Petitioner.

Vs.

1. Secretary Committee of Management,
   Kanhaiyalal D.A.V. Degree College,
   Roorkee, District Haridwar.
2. District Inspector of Schools, Haridwar,
3. Director of Education (Higher Education)
   U.P. Allahabad. ------Respondents.

Sri Rajendra Dobhal, learned counsel for the petitioner.
Sri M.C. Pandey, learned counsel for respondent no. 1.
Learned Standing Counsel for respondent no. 2 & 3.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Rajendra Dobhal, learned counsel for the petitioner, Sri M.C. Pandey, learned counsel for respondent no. 1 and learned Standing Counsel for respondent no. 2 & 3.

By means of this writ petition, the petitioner has prayed to issue a writ in the nature of certiorari quashing the order dated 10.08.1998 rejecting the application of petitioner dated 12.01.1998.

The petitioner was employed as Class IV employee on 02.08.1974 in Kanhaiyalal D.A.V. Degree College, Roorkee district Haridwar. The petitioner is M.A. in English who was directed by the authorities of the institution to officiate as Library Clerk since 1988 and is continuing as such till the filing of the writ petition. The Institution is a Govt. aided Institution and is affiliated to the University of Meerut. A Govt. Order was issued by the Government on 28.05.1984 wherein the authorities were directed to fill up the vacancies on the event of any vacancy falls

in Class III category by way of promotion upto 15% from Class IV employees who have worked for more than five years and posses minimum qualification for Class III posts. In the Institution, there are six sanctioned posts of Class III employees and, as such, as per the G.O. dated 28.05.1984, one post is to be filled by way of promotion under 15% quota from amongst Class IV employees. Since the petitioner is qualified and was eligible to be promoted, he was not considered for promotion and the Institution by way of advertising the same to Dainik Jagran dated 25.12.1997. Consequently, the petitioner moved written representation on 12.01.1998 to the authorities and when the authorities took no action he was constrained to file the writ petition no. 4836 of 1998 which was disposed of finally on 13.02.1998 wherein the Court has held that it appears that a representation is pending before the appropriate authority I, dispose of this writ petition without entering into the merit of the claim with a direction to the respondent no. 1 to decide the said representation of the petitioner in accordance with law considering all relevant facts and such decision is to be taken within a period of three weeks from the date of production of certified copy of this order alongwith a copy of the said representation.

Thereafter, the Management decided the representation of the petitioner vide its order dated 10.08.1998 rejecting the representation on various grounds. One of the ground on which the representation was rejected was that a ban has already been imposed by the Govt. on the appointments vide order dated 21st February 1998 and, as such, the petitioner cannot be appointed on the post of Class III. The second ground taken by the Management for rejecting the representation was that since there are only three posts of Routine Grade Clerk in the

Institution and 15% of the three posts comes to only 0.45 and, as such, it is impossible to promote an employee on the post of Routine Grade Clerk. It is not disputed that there are six posts of Class III employee thus, as per the G.O. dated 28.05.1984 15% posts of class III employees are to be filled by way of promotion from amongst Class IV employees. The Management has fell into error by not clubbing all the posts of Class III for the purposes of determining 15% quota for promotion and has taken in to consideration only three posts of Routine Grade Clerk which is entirely against the G.O. It is this order, which is under challenge in this writ petition.

An application was moved by the petitioner that the respondent has fixed date for interview as 05-03-2000 to fill up the post of Routine Grade Clerk which is lying vacant with their Institution, the Allahabad High Court on 03-03-2000 directed that till further orders, the interview schedule to be held on 05.03.2000 may be held but the result should not be declared. It is surprising that if there is a ban imposed by the Govt. on recruitment of Class III posts, under which circumstances the respondent's Institution has fixed the date of interview to fill up the post of Routine Grade Clerk lying vacant with them? Learned counsel for the respondent could not satisfy the Court on this significant point.

The Committee of Management have filed counter affidavit wherein it is admitted that at present the sanctioned strength of Class III employees in the Institution is six. In para-15 & 16 of the counter affidavit it is stated that only one vacant post of Routine Grade Clerk came into existence when one Kanti Prasad Agarwal was promoted to the post of Head Clerk. To fill up the post of Routine Grade Clerks an advertisement was issued on 04.11.1999. In all 58 candidates appeared in the interview before the Selection Committee and three names have

been recommended by the Selection Committee. However, no promotion letter could be issued in favour of the selected person on account of interim order granted by this Court.

The ground taken by the Committee of Management for non considering the petitioner's claim for promotion is that since there are only three posts of Routine Grade Clerk, no post can be filled under 15% quota from amongst Class IV employees. The submission made by learned counsel for the respondent that since there are only three posts of Routine Grade Clerk in the Institution, no post can be filled under 15% quota, cannot be accepted. As already stated above, 15% quota is to be filled on the total strength of Class III employees which is admittedly six with the Institution and, as such, one post can be filled under 15% quota from amongst Class IV employees. Since the petitioner is fully qualified for being promoted to the post of Class III employee, he is entitled to be considered for promotion.

For the reasons recorded above, the writ petition is allowed. The respondents are directed to consider the claim of the petitioner for promotion under 15% quota from amongst Class III employees as per the Government Order dated 28.05.1984 issued by the Government. No order as to costs.

(M.M. Ghildiyal, J.)

July 19, 2005:
NCM: